



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

December 3, 2007

Edwin E. Wallis, Jr., Registered Agent
Delta Contracting Co., LLC
325 North Parkway
Jackson, Tennessee 38305

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5206

Subject: DIRECTOR'S ORDER NO. WPC07-0242
THOMSEN FARMS
WEAKLEY COUNTY, TENNESSEE



Dear Mr. Wallis:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Jackson
DWPC – Compliance File
OGC



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

December 3, 2007

Jeff Reasons, Registered Agent
Reasons Construction Co.
1100 Pikeview
Dresden, Tennessee 38225

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5213

Subject: DIRECTOR'S ORDER NO. WPC07-0242
THOMSEN FARMS
WEAKLEY COUNTY, TENNESSEE

 **FILE**

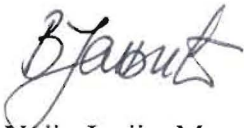
Dear Mr. Reasons:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

December 3, 2007

Vern C. Thomsen, Jr.
25 Hatchmor Drive
Jackson, Tennessee 38305

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5220

Subject: DIRECTOR'S ORDER NO. WPC07-0242
THOMSEN FARMS PHASE III
WEAKLEY COUNTY, TENNESSEE

 **FILE**

Dear Mr. Thomsen:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,



Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Jackson
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
VERN C. THOMSEN, JR.,)	
REASONS CONSTRUCTION)	
COMPANY, INC., and)	CASE NO. WPC07-0242
DELTA CONTRACTING)	
COMPANY, LLC)	
)	
RESPONDENTS)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Vern C. Thomsen, Jr. (hereinafter "Respondent Thomsen") is the owner/developer of a commercial/residential housing development described as Thomsen Farms, Phase III (hereinafter "the site") located on Oil Well Road in Weakley County.

Service of process may be made on Respondent Thomsen at 25 Hatchmoor Drive, Jackson, Tennessee 38305.

III.

Reasons Construction Company, Inc. (hereinafter “Respondent Reasons”) is an active corporation licensed to conduct business in the State of Tennessee and is contracted by Respondent Thomsen to conduct construction activities at the site. Service of process may be made on Respondent Reasons through Jeff Reasons, Registered Agent, at 3825 East End Drive, Humboldt, Tennessee 38343.

IV.

Delta Contracting Company, LLC (hereinafter “Respondent Delta”) is an active limited liability corporation licensed to conduct business in the State of Tennessee and is contracted by Respondent Thomsen to conduct construction activities at the site. Service of process may be made on Respondent Delta through Edwin E. Wallis, Jr., Registered Agent, at 325 North Parkway, Jackson, Tennessee 38305.

JURISDICTION

V.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to

the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

VI.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondents have violated the Act.

VII.

Moize Creek and its unnamed tributaries, referred to herein, are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications For Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Moize Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering

and wildlife. Additionally, Moize Creek is listed as impaired for siltation due to Municipal Separate Storm Sewer System (MS4) discharges.

VIII.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

FACTS

IX.

On January 10, 2007, division personnel from the Jackson Environmental Field Office (J-EFO) conducted a complaint investigation at the site. Division personnel found sediment laden water being pumped out of a sediment basin without first being filtered or treated resulting in the loss of sediment to the city’s storm sewer system.

X.

On January 11, 2007, division personnel from the J-EFO conducted a thorough inspection at the site. Division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures across the site were inadequate, un-maintained, not in

accordance with the SWPPP, and sediment was not being retained on site. The northeast sediment basin next to Walker Road did not contain an outfall structure nor were the riprap check dams along the inlet to the sediment basin installed as diagrammed in the SWPPP. There were no EPSC measures installed around the drop structure inlet into the Walker Road storm sewer managed by the City of Jackson. Neither the Notice of Coverage (NOC) nor the SWPPP were posted on site.

XI.

On January 11, 2007, the division issued a Notice of Violation (NOV) to Respondent Thomsen for violations noted in the January 10, and January 11, 2007, inspections. The NOV instructed Respondent Thomsen to install and maintain EPSC measures according to the SWPPP and evaluate the storm sewer system located adjacent to the site to determine the severity of the sediment discharge impacts. Respondent Thomsen was further instructed to submit EPSC inspection reports and a revised SWPPP to the J-EFO by February 2, 2007.

XII.

On January 29, 2007, Respondent Reasons submitted correspondence to the division along with the EPSC inspection reports. In the letter, Respondent Reasons stated that all EPSC measures requested in the January 11, 2007, NOV had either been repaired or installed and that no sediment was found in the storm sewer system.

XIII.

On October 22, 2007, the division conducted a follow-up site inspection and noted that conditions at the site had not changed since the January 11, 2007, inspection. Division personnel noted that EPSC measures across the site were inadequate, unmaintained, had not been installed in accordance with the SWPPP, and that sediment was not being retained on site. Sediment laden water was running across Walker Road at a construction entrance where no EPSC measures had been installed. Also, on the east side of Walker Road, sediment laden water had ponded and then flowed into two storm water drains located in a separate parking lot behind the North Town Shopping Center. This drainage system flows into a ditch, which flows into an unnamed tributary to Moize Creek.

XIV.

On October 23, 2007, division personnel issued a NOV to Respondent Thomsen and Respondent Delta for violations noted in the October 22, 2007, site inspection. The NOV instructed Respondents Thomsen and Delta to evaluate disturbed areas on all phases of the project and implement adequate EPSC measures. Respondents Thomsen and Delta were required to submit to the division all inspection reports, documentation of the implementation of all necessary EPSC measures, removal of fugitive sediment, stabilization of the site, and an amended SWPPP by November 5, 2007.

XV.

On October 25, 2007, division personnel conducted a follow-up site visit west of Walker Road and south of Oil Well Road. Division personnel noted that silt fencing, at various locations in the site, had been installed incorrectly or was un-maintained, allowing sediment, laden water to flow into storm drains along Union University Drive. These storm drains emptied into a ditch located on the east side of Highway 45, which then flowed into the unnamed tributary to Moize Creek. Division personnel noted heavy sediment deposits in the unnamed tributary and noted that the site and its out parcel projects were the only active construction areas within this drainage system. Neither the NOC nor the SWPPP were posted on site.

XVI.

On November 5, 2007, division personnel received all inspection reports, documentation of the implementation of all necessary EPSC measures, and an amended SWPPP.

XVII.

During the course of investigation, the division incurred DAMAGES in the amount of FOUR HUNDRED AND SIX DOLLARS AND EIGHTY-FIVE CENTS (\$406.85).

VIOLATIONS

XVIII.

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XIX.

By causing a condition of pollution to Moize Creek, the Respondents have violated T.C.A. Section §69-3-114(a):

T.C.A. §69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondents:

1. The Respondents shall, within SEVEN (7) DAYS of receipt of this Order, implement appropriate EPSC measures to ensure that no additional material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within 15 days of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the J-EFO, 1625 Hollywood Drive, Jackson, Tennessee, 38305.
2. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order, submit a Corrective Action Plan (CAP) to remove accumulated sediment from the storm sewer system in coordination with the City of Jackson MS4 program and from the unnamed tributary to Moize Creek. The CAP should describe

the manual methods used for stream restoration for the impacted portions of the unnamed tributary and should include a timetable for implementation. The CAP shall be submitted to the Water Pollution Control manager in the J-EFO. Any deficiencies to the CAP shall be corrected by the Respondents within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Water Pollution Control manager in the J-EFO to the address listed in item 1, above.

3. The Respondents shall, within FORTY FIVE (45) DAYS of division approval, complete the activities outlined in the approved CAP and submit notification of completion to the Water Pollution Control manager in the J-EFO at the address listed in item 1, above.
4. The Respondents shall maintain professionally designed EPSC measures until final site stabilization.
5. The Respondents shall pay a CIVIL PENALTY of TWENTY FOUR THOUSAND FIVE HUNDRED DOLLARS (\$24,500.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of SIX THOUSAND TWO HUNDRED DOLLARS (\$6,200.00).
 - b. If the Respondents fail to comply with Part XX, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of

FOUR THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS

(\$4,575.00), payable within 30 days of default.

- c. If the Respondents fail to comply with Part XX, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$4,575.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XX, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$4,575.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XX, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$4,575.00), payable within 30 days of default.

- 6. The Respondents shall pay DAMAGES to the division in the amount of FOUR HUNDRED AND SIX DOLLARS AND EIGHTY-FIVE CENTS (\$406.85).

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall

submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 3rd day of December, 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The

petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this

matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.